

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

BRIEF FOR APPELLANT AND APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit

JAN 26 1959

Joseph W. Stewart

CLERK

No. 14,698

JULIET C. BRYAN,

159

Appellant,

v.

N. MEYER BAKER
and
FRANK PARONI,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

H. EUGENE BRYAN

635 F Street, N. W.
Washington, D. C.

Attorney for Appellant

QUESTIONS PRESENTED

Whether the lower court erred:

1. In denying appellant's motion for a preliminary injunction.
2. In awarding N. Meyer Baker a judgment for attorney's fee in the amount of \$500.00 against appellant.

INDEX

	<u>Page</u>
JURISDICTIONAL STATEMENT	1
STATEMENT OF THE CASE	2
STATEMENT OF POINTS	2
SUMMARY OF ARGUMENT	2
ARGUMENT	3
CONCLUSION	4

CASE CITED

Von Rosen v. Dean, 59 App. D.C. 360	3
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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 14,698

JULIET C. BRYAN,

Appellant,

v.

N. MEYER BAKER

and

FRANK PARONI,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

The jurisdiction of this court under 15 Stat. 726, 28 U.S.C. 1291 (1952 Edition) to review the action of the District Court in this proceeding. The court below granted N. Meyer Baker a judgment for \$500.00 as attorney fee against appellant and denied appellant's motion for a preliminary injunction against appellee Frank Paroni, on the 8th day of August, 1958, the order being signed August 12, 1958.

STATEMENT OF THE CASE

Appellant filed a complaint on the 14th day of July, 1958, against Frank Paroni, trustee defendant, to require him to account for demands made upon plaintiff as a prerequisite to his releasing as "paid and satisfied" a second deed of trust note secured on appellant's real estate in which he was designated as substitute trustee. Appellant with the filing of the complaint also filed a "motion for a temporary restraining order," with a request that a preliminary injunction issue. The request for a temporary restraining order was heard and denied in chambers, but the cause set down for early hearing on the request for a preliminary injunction. Thereafter a motion to dismiss the motion for a preliminary injunction was filed by appellee Paroni.

The appellant's motion for a preliminary injunction and appellee Paroni's motion to dismiss were heard on the 8th day of August, 1958. The court granted appellee Paroni's motion to dismiss and then proceeded to grant appellee N. Meyer Baker a judgment for \$500.00 against appellant, as attorney's fee.

STATEMENT OF POINTS

The court below erred as follows:

1. In denying plaintiff's motion for a preliminary injunction.
2. In granting N. Meyer Baker a judgment against plaintiff for attorney's fee.

SUMMARY OF ARGUMENT

As the suit involved various charges and demands made by appellee Paroni, which were challenged and contested by appellant, and as appellee Paroni had it in his power to proceed against appellant's property for any amount claimed by him to be owing before a hearing could be had on the complaint for an accounting, the court should have

granted the motion for a preliminary injunction to maintain a status quo between the parties and particularly so because Paroni was representing a non-resident defendant.

The judgment for \$500.00 granted appellee N. Meyer Baker was not properly chargeable against appellant. Or if a fee was properly due Baker and chargeable against appellant, then appellant was entitled to a hearing to determine the reasonable amount thereof, considering services rendered.

ARGUMENT

This cause first came to issue in the United States District Court in Civil Action No. 3330-55, a complaint for usury filed by appellant herein against Chalmers F. Groff, trustee designated in a second deed of trust note owned by the Union Finance Company of Silver Spring, Maryland. This complaint was dismissed with prejudice by agreement of counsel because of the position taken by defendant's counsel therein, to the effect that in order to determine whether or not usury exists in order to prevent foreclosure, the entire debt must be paid and not merely a single payment or payments involved. (Defendant's motion to dismiss and quash injunction in Civil Action #3330-55) Von Rosen v. Dean, 59 App. D.C. 360.

As the suit was filed prematurely, and before a cause of action arose, its dismissal with prejudice was not an adjudication of any controversy. Its dismissal with prejudice could not make res judicata the controversy when seasonably and properly brought. It could not properly be the basis for the dismissal of any proper action brought to determine the respective legal rights of the parties.

The summary judgment granted in Civil Action No. 1278-57 was predicated upon the mistaken interpretation that the dismissal in Civil Action No. 3330-55 was an adjudication of the merits of this controversy.

The complaint in Civil Action No. 1836-58 was properly brought, there having been no adjudication of the charge of usury and in view of the exorbitant demands made by appellee Paroni through his attorney N. Meyer Baker (see letter dated July 18, 1958, to Mrs. Juliet Rebecca Bryan). Appellant was entitled to a full hearing on all charges demanded by appellees as to whether they were proper charges as well as reasonable. Whether the demand of N. Meyer Baker for \$920.00 was a proper and/or reasonable charge was not properly before the court when the matter was heard. Upon the insistence of counsel for appellant, the court did delete certain words from the proposed order which would have improperly favored appellee's case.

CONCLUSION

In light of the foregoing reasons advanced, appellant urges a reversal of the action taken by the District Court (1) in its order of August 12, 1958, denying appellant a preliminary injunction until this matter can be heard on its merits, and (2) in granting appellee N. Meyer Baker a judgment for \$500.00 against appellant.

Respectfully submitted,

H. EUGENE BRYAN

635 - F Street, N. W.
Washington, D. C.

Attorney for Appellant.

INDEX

	<u>Page</u>
Complaint to Require Defendant to Account for Demands due from Plaintiff	1
Motion for Preliminary Injunction	2
Opposition to Motion for Preliminary Injunction	3
Letter from Eugene Bryan to N. Meyer Baker dated August 6, 1958	4
Affidavit of N. Meyer Baker	4
Letter from N. Meyer Baker to Mrs. Juliet Rebecca Bryan, dated July 18, 1958	6
Order Denying Plaintiff's Motion for Preliminary Injunction	7
Defendant's Motion to Dismiss and to Quash Injunction - C.A. No. 3330-55	8
Notice of Appeal	9

APPELLANT'S APPENDIX

[Filed July 14, 1958]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

JULIET C. BRYAN
R. F. D. #3
Fredericksburg, Virginia

Plaintiff

vs.

FRANK PARONI, Trustee
Lawyers Title Insurance Company
1431 Eye Street, N. W.
Washington, D. C.

Defendant

Civil Action No. 1836-58

COMPLAINT TO REQUIRE DEFENDANT TO
ACCOUNT FOR DEMANDS DUE FROM PLAINTIFF

Plaintiff is the owner of record of premises known as "Lot 32 in D. B. Groff's subdivision of lots in square 868 as per plat recorded in liber 12, folio 22 in the surveyor's office for the said District of Columbia," designated as 28 Seventh Street, N. E., Washington, D. C. That heretofore to wit on the 8th day of March 1955, she executed a certain promissory note in the amount of \$2,400, secured by a deed of trust on the aforementioned premises; that she is now desirous of paying said debt but the party secured, Union Finance Company of Silver Spring, Maryland, is demanding various and sundry charges and fees, exorbitant and having no relation to this secured obligation, as a condition to their releasing their deed of trust. Union Finance Company is demanding, among other things, a fee for its attorney of \$900.

The party defendant, Frank Paroni, was substituted trustee for the former trustee, Chalmers F. Groff, who resigned. Said Paroni being substituted at the request of the Union Finance Company and for the purpose of instituting foreclosure proceedings.

WHEREFORE, the premises considered, plaintiff prays:

1. That an accounting and hearing be had to determine the amount due from the plaintiff to the Union Finance Company.
2. That pending the hearing on this complaint the Court issue a preliminary injunction restraining Frank Paroni, and all those acting in concert with him, from proceeding to enforce their claim by foreclosure against premises referred to herein.
3. And for further relief.

/s/ Juliet C. Bryan

[Verification]

[JURAT dated July 14, 1958.]

[Filed July 14, 1958]

MOTION FOR PRELIMINARY INJUNCTION

Comes now the plaintiff in the above entitled cause and moves the Court for a preliminary injunction restraining the defendant and all those acting in concert with him from proceeding by foreclosure to enforce its demands against plaintiff herein until such time as an accounting can be had to determine the correct amount due from plaintiff to defendant and as grounds therefore refers to plaintiffs verified complaint incorporated and made a part of this motion.

/s/ H. Eugene Bryan
Attorney for Plaintiff

* * * *

Let this be set for hearing
at 10:00 AM Aug. 8, 1958

/s/ Luther W. Youngdahl
Judge

[Filed August 7, 1958]

OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION

Now comes the defendant through his attorney of record and, as well on behalf of the noteholders, and opposes the Motion for Preliminary Injunction in this case and for reason states as follows:

1. That the note obligation sued upon is, and has been, in default since March 4, 1957, and no payments have been made thereon since that date by the plaintiff or anyone on her behalf.

2. That note obligation is long past due and repeated demands for payment upon the plaintiff have not resulted in payment. The most recent demand for payment was on July 18, 1958, as shown by a copy of the letter attached to the affidavit of N. Meyer Baker, counsel for the defendant in this cause, and incorporated herein by reference.

3. The plaintiff does not come into the court with clean hands and is abusing and distorting the processes of this court as evidenced by the following cases instituted in this court on this same subject and between the same parties or their substitutions and for the same relief:

A. Civil Action No. 3330-55, dismissed with prejudice.

B. Civil Action No. 1298-57 affirmed on appeal in granting Summary Judgment against the plaintiff and in favor of the trustee under the deed of trust.

4. The instant suit is frivolous and without merit because the information that the plaintiff seeks by this suit has already been furnished her under the aforesaid letter of counsel dated July 18, 1958.

5. This suit is res adjudicata by virtue of the two foregoing suits mentioned above in 3 A and B.

6. Plaintiff's only objection is to the amount of counsel's fees which have been added to the second trust note incurred as a result of suits instituted by the plaintiff listed above. Plaintiff offers to settle the pending litigation by the payment of the principal of the note alone without any accrued interest, or insurance, or any other expenses. See attached Thermofax copy of the letter from plaintiff's attorney to defendant's attorney dated August 6, 1958, attached hereto and

incorporated herein by reference.

/s/ N. Meyer Baker
Attorney for the Defendant
* * * *

[Certificate of Mailing]

[Filed August 7, 1958]

H. EUGENE BRYAN
ATTORNEY AT LAW
Columbian Building
Washington 1, D. C.

August 6, 1958

N. Meyer Baker, Esq.
Metropolitan Bank Building
Washington, D. C.

Dear Mr. Baker:

This will confirm my previous conversations with you that Juliet C. Bryan is ready to pay off the balance due on her note to the Union Finance Company. The offer applies only to the outstanding balance on the note.

Very truly yours,

/s/ H. Eugene Bryan

HEB:jb

[Filed August 7, 1958]

AFFIDAVIT OF N. MEYER BAKER

DISTRICT OF COLUMBIA: SS

N. MEYER BAKER, being first duly sworn, on oath, states that he is counsel for the defendant in the above entitled cause and has personal knowledge of the facts hereinafter set forth.

This present action is the third which has been instituted involving the same subject matter. The first such suit was Civil Action 3330-55 and was entitled JULIET R. BRYAN, Plaintiff, vs. CHALMERS F. GROFF, Trustee, Defendant, was for a preliminary injunction,

accounting, and the relief and was dismissed with prejudice.

The second proceeding was Civil Action No. 1298-57 filed in this Court by JULIET C. BRYAN, Plaintiff, vs. CHALMERS F. GROFF, Defendant for reformation of the note and other relief, among which there was a claim for accounting between the plaintiff and the holder of the note, the Union Finance Company through its trustee named as the defendant in the suit. In this proceeding there was a motion for summary judgment granted the defendant which the plaintiff appealed to the U.S. Court of Appeals and that court in its case no. 14,220 affirmed the decision of the lower court on May 15, 1958.

Under the deed of trust in this case, a suit was filed in this court under Civil Action No. 78-58 to substitute a trustee which the plaintiff vigorously opposed and, finally, on the hearing of the motion for summary judgment in that suit agreed to the appointment of the present trustee who is defendant in this instant suit. Except for the suit to substitute trustee, plaintiff has instituted all of the foregoing litigation, seeking almost identical relief in each instance.

Finally, with the appointment of the substitute trustee, a letter was sent by your affiant as counsel for the noteholder to the plaintiff and her husband attorney setting forth in detail the amount required to settle the note obligation involved herein. Plaintiff's counsel has acknowledged to your affiant in the Courthouse on August 5, 1958, that he had received such a letter and that they objected to it principally as to the amount claimed for attorney's fees. A copy of this letter is attached to this affidavit and by reference incorporated herein.

There is no question that the second trust note involved in this proceeding is, and has been, in default and the plaintiff and her husband attorney are merely again seeking to delay the payment of a debt made by themselves and of which they have received the benefit.

/s/ N. Meyer Baker

[JURAT dated August 7, 1958.]

[Filed August 7, 1958]

LAW OFFICES
OF
MERCIER, SANDERS, BAKER & SCHNABEL
Suite 710-Metropolitan Building
Washington 5, D. C.

July 18, 1958

Mrs. Juliet Rebecca Bryan
635 F Street, N. W.
Washington, D. C.

Dear Mrs. Bryan:

This is to advise you that the Second Trust note on the property you own at 28 7th Street, N. E., Washington, D. C. Lot 32 in Square 868, which is held by my client, the Union Finance Company, Inc., is now, and has been, in default since March 4, 1957 and that this matter has been referred to the Substitute Trustee, Mr. Frank Paroni to institute foreclosure proceedings at once.

In order to avoid foreclosure proceedings and the attendant costs, a certified check or cash for the following total amount is requested:

Principal on Second Trust Note	\$ 1,497.20
Interest 3/4/57 - 7/18/58	123.26
Insurance on Second Trust Note	9.80
Interest 5/29/58 - 7/18/58	.15
Court costs incurred on your note	84.19
Interest 5/31/58 - 7/18/58	.76
Counsel Fees Incurred on your note	920.00
Interest 6/4/58 - 7/18/58	6.66
	\$ 2,641.98

I should appreciate some advice from you as to your intentions regarding the payment of this obligation by July 25, 1958.

A copy of this letter is being sent to your attorney and husband, Mr. H. Eugene Bryan, 635 F Street, N. W., Washington, D. C., who is the endorser on this note.

cc: Mr. H. Eugene Bryan

Very truly yours,
/s/ N. Meyer Baker

[Filed August 12, 1958]

**ORDER DENYING PLAINTIFF'S MOTION FOR PRELIMINARY
INJUNCTION**

Upon consideration of the Plaintiff's Motion for a Preliminary Injunction filed herein and the Defendant's Opposition thereto, and after argument in open court by both counsel for the Plaintiff and for the Defendant, it is by the Court this 12th day of August, 1958,

ORDERED

1. That the Plaintiff's Motion for a Preliminary Injunction be, and the same is hereby denied.

2. That a Judgment for the sum of five hundred dollars (\$500.00) is hereby granted N. Meyer Baker as counsel fees as the attorney for the defendant ~~for services rendered in connection with the litigation involving the Deed of Trust note which is the subject of these proceedings.~~

L. W. Y. This sum shall be paid to the said N. Meyer Baker by the plaintiff, Juliet C. Bryan (also known as Juliet Rebecca Bryan and as Juliet R. Bryan) and that the said N. Meyer Baker shall have execution thereon.

/s/ Luther W. Youngdahl
Judge

NOTICE

TO: H. Eugene Bryan
635 F Street, N. W.
Washington, D. C.

Please take notice that the foregoing Order has been mailed post-paid to the Motions Commission of this Court for presentation to Judge Youngdahl for his signature on Tuesday, August 12, 1958.

[Certificate of Service]

[Filed August 2, 1955]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIET R. BRYAN)

Plaintiff)

vs.)

CHALMERS F. GROFF, Trustee)

Defendant)

Civil Action File No.
3330-55

DEFENDANT'S MOTION TO DISMISS AND TO QUASH INJUNCTION

Now comes the defendant, CHALMERS F. GROFF, trustee, by his attorney and moves the Court to dismiss the complaint filed herein and to quash the restraining order issued in this cause and for reasons states as follows:

1. That the note involved herein was purchased at a discount outside the District of Columbia for a good and valuable consideration - Twenty-one Hundred (\$2100.00) Dollars cash - and that the holder thereof is a holder in due course.
2. That the defendant does not come into Court with clean hands.

/s/ N. Meyer Baker
Attorney for Defendant

NOTICE

H. Eugene Bryan, Esq.
416 - 5th Street, N. W.
Washington, D. C.
Attorney for Plaintiff

Please take notice that the above entitled motion will be heard on August 4, 1955, at 10:00 a. m. on the return date set forth in the Order of this Court in the cause dated July 27, 1955.

Points and Authorities In Support of Motion

1. It is not usurious to purchase a note at a discount.

McNeill vs. Lilly
65 App. D. C. 210

Krevait vs. Turover
39 Atl (2nd) 207
Mun. Court of App. D. C.

Elliott vs. Schlein
104 Atl (2nd) 418
Mun. Court of App. D. C.

2. In order to determine whether or not usury exists in order to prevent foreclosure, the entire debt must be paid and not merely to a single payment or payments involved.

Von Rosen vs. Dean
59 App. D. C. 360

Copy of the foregoing mailed postpaid to plaintiff's attorney at his office address of record this 1st day of August, 1955.

/s/ N. Meyer Baker
Attorney for Defendant

[Filed August 22, 1958]

NOTICE OF APPEAL

Notice is hereby given this 22nd day of August, 1958, that Juliet C. Bryan hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 12th day of August, 1958, in favor of N. Meyer Baker against said Juliet C. Bryan.

/s/ H. Eugene Bryan
Attorney for Plaintiff

N. M. Baker, Attorney
Nat'l. Metropolitan Bank Bldg.

In The United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED FEB 18 1959

NO. 14,698

Joseph W. Stewart

CLERK

JULIET C. BRYAN,
Appellant,

v.

N. MEYER BAKER
and
FRANK PARONI,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

N. MEYER BAKER
613 15th Street, N. W., #710
Washington 5, D. C.

Attorney for the Appellees.

QUESTIONS PRESENTED

1. Can a litigant repeatedly litigate the same issues between the same parties or their privies in interest, on the same subject matter when these same issues have been resolved by two prior suits?
2. Does a litigant have any standing on appeal where she requests the trial Court to fix the amount of an attorney's fees in a foreclosure matter and when the trial Court does so, appeal his decision?

(i)

INDEX

	<u>Page No.</u>
COUNTER-STATEMENT OF THE CASE.	1
SUMMARY OF ARGUMENT.	3
ARGUMENT.	3
1. APPELLANT HAS REPEATEDLY RAISED THE ISSUES BETWEEN THE SAME PARTIES OR THEIR PRIVIES IN INTEREST, CONCERNING THE SAME SUBJECT MATTER	3
2. THE GRANTING OR DENYING OF AN INJUNC- TION IS WITHIN THE SOUND DISCRETION OF THE COURT	4
3. THE TRIAL COURT HAD THE AUTHORITY TO GRANT EQUITABLE RELIEF AND DETERMINE THE AMOUNT OF THE ATTORNEYS FEES	5
CONCLUSION.	6

RULES INVOLVED

1. Rule 1, Federal Rules of Civil Procedure	5
---	---

CASES CITED

<u>Bryan v. Groff</u> , ____ U.S. App. D.C. ____, 259 Fed. (2nd) 162	2
<u>Embassy Dairy v. Camalier</u> , 93 U.S. App. D.C. 367, 211 Fed (2nd) 41.	5
<u>Gatliff Coal Co. v. Cox</u> , 142 Fed. (2nd) 879	5
<u>Sawyer v. U.S. Steel Corp.</u> , 90 U.S. App. D.C. 418, 197 Fed (2nd) 852	5
<u>Spilker v. Hankins</u> , 88 U.S. App. D.C. 209, 88 Fed. (2nd) 37	4
<u>Usher v. 1015 N Street, N. W. Co-Op Assn.</u> , 120 Atl. (2nd) 921	4

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 14,698

JULIET C. BRYAN,
Appellant,

v.

N. MEYER BAKER
and
FRANK PARONI,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

COUNTER-STATEMENT OF THE CASE

Juliet C. Bryan executed and delivered her second deed of trust note on March 8, 1955, secured on the property which she owned at 28 Seventh St., N. E., in the District of Columbia.

Thereafter she made payments on the aforesaid trust note until sometime in 1955 when default occurred and foreclosure was threatened at which time she filed a suit in the Court below in C.A. 3330-55 on July 28, 1955 to stay the threatened foreclosure proceedings. This suit was settled and

dismissed "with prejudice." (Praecipe in C.A. 3330-55, filed on August 24, 1955.) This suit was entitled "Complaint for Injunction, Accounting and other Relief."

On May 29, 1957, appellant filed a second suit involving the above described note which had again become in default with foreclosure again threatened. This second suit was entitled "Complaint to Reform Note and Other Relief " (Complaint filed in C.A. 1298-57 on May 29, 1957.) and was again filed to prevent threatened foreclosure. A Motion for Summary Judgment was filed by this Appellees' substituted Trustee and the motion was granted. Appellant appealed this case, Bryan v. Groff, and it was affirmed on appeal by this Court on May 15, 1958 in case number 14,220, Bryan v. Groff, _____ U. S. App. D.C. _____, 259 Fed. (2nd) 162.

After the latter decision was rendered, the note holder demanded payment for the defaulted note including interest, principal, attorneys fees and costs. Appellant then offered by letter through her counsel, to pay only the principal of the defaulted note without any payment whatsoever for interest, attorneys fees or costs. When the note holder instituted foreclosure proceedings, the appellant filed the instant suit in the lower court entitled this suit "Complaint to Require Defendant to Account for Demands Due from Plaintiff." (Appellants' Appendix 1).

In each of the three suits filed on this matter by the appellant she requested the same relief, i.e. for an injunction, for an accounting and for other relief. (See Complaints in C.A. 3330-55, C.A. 1298-57 and Appellants' App. 2).

On the hearing of the motion for the issuance of a preliminary injunction filed by the appellant, her counsel advised the Court that appellant would be satisfied if the Court determined the attorney's fee in this cause to settle the matter and that this was the sole issue in this case (Appellee's Appendix 5). Whereupon the Court fixed the attorney's fee at \$500.00 in lieu of the \$920.00 which has been demanded. Judgment was granted the attorney for that amount.

The Court denied the temporary injunction and the property was routinely foreclosed. No one on behalf of the appellant appeared at the foreclosure sale nor did the appellant ever contest the sale or any of its proceedings.

Appellant then appealed from the Court's judgment.

SUMMARY OF ARGUMENT

1. The matter is res adjudicata.
2. The lower Court did not abuse its discretion in denying appellant's motion for a preliminary injunction and in determining the allowance of attorney's fees at the request of the appellant.
3. The lower Court had the authority to grant the appellant's request for the equitable relief she sought.

ARGUMENT

1. APPELLANT HAS REPEATEDLY RAISED THE SAME ISSUES, BETWEEN THE SAME PARTIES OR THEIR PRIVIES IN INTEREST CONCERNING THE SAME SUBJECT MATTER.

This instant suit is the third suit filed by the appellant on the identical subject matter, between the same parties of their privies in interest concerning the same issues.

The issues asserted in this cause in this Court are on appeal for the second time.

The record reveals that in each suit filed in the Court below appellant has requested the following relief:

1. For the issuance of an injunction.
2. For an accounting.
3. For other relief.

Each of these suits have been variously entitled:

1. Complaint for an Injunction, Accounting and Other Relief
(First Suit - Civil Action 3330-55).
2. Complaint To Reform Note and Other Relief
(Second Suit - Civil Action 1298-57).
3. Complaint To Require Defendant to Account for Demands Due Plaintiff.
(Third Suit - Civil Action No. 1836-58).

Yet each suit has been between the same parties or their privies in interest, concerning the same subject matter and on the identical issues. The purpose of the doctrine of "res adjudicata" is to determine once and for all time, all of the issues on one matter, at one time and put an end to a particular matter. Spilker v. Hawkins, 88 U.S. App. D.C. 209, 188 Fed. (2nd) 37; Usher v. 1015 N Street, N. W. Co Op. Assn., 120 Atl. (2nd) 921. The trial Court so informed appellant's counsel (Appellee's Appendix 3) and appellant's counsel agreed with the trial Court (Appellee's Appendix 3). Yet when the trial Court made the determination that appellant had requested, she became dissatisfied and now seeks to reverse the trial Court for granting the relief that she had requested!!!!

A comparison of the relief requested in each of the three suits filed by appellant in the lower Court conclusively established the repetitious refileing of the same suit with the exception of the description of the nature of the complaint in the caption of each suit.

2. THE GRANTING OR DENYING OF AN INJUNCTION IS WITHIN THE SOUND DISCRETION OF THE COURT.

Upon the filing of the instant suit, appellant sought a temporary restraining order (Appellants' App. 2). This the trial Court denied but set the matter down for hearing promptly on short notice, (Appellant's App. 2), in order to hear both parties on the motion.

On the hearing of the motion the trial Court devoted an unusual amount of time in advance of the hearing on the motion to ascertain the merits of the case and so informed counsel at the time of the hearing. The Court stated that it had carefully read and reviewed the records in both of the prior suits (C.A. 3330-55 and C.A. 1298-57). The trial Court then went fully into the matter with counsel for both parties, denied the appellant's motion for a preliminary injunction, fixed the amount of the attorneys fees in question and concluded the matter. (Appellee's Appendix 5-6).

The granting or denying of the motion for the preliminary injunction was within the sound discretion of the trial Court. See Sawyer v. U. S. Steel Corp., 90 U.S. App. D. C. 418, 197 Fed. (2nd) 582; Embassy Dairy v. Camalier, 93 U. S. App. D. C. 367, 211 Fed. (2nd) 41.

3. THE TRIAL COURT HAD THE AUTHORITY TO
GRANT EQUITABLE RELIEF AND DETERMINE
THE AMOUNT OF THE ATTORNEYS FEES.

Appellant had requested the trial Court to "grant further relief." (Appellant's App. 2). This was within the Court's power and authority since it had both legal and equitable power. Rule 1, F.R.C.P. Its use of this power was appropriate in the matter before it. Gatliff Coal Co. v. Cox, 142 Fed. (2nd) 879.

Appellant's principal claim for relief was against the alleged excessiveness of the attorney's fee claimed as an item of expense. Her counsel stated to the trial Court that appellant would be satisfied if the trial Court would determine the matter and finally resolve it. This the trial Court did and fixed the attorneys fees at five hundred dollars. The trial Court further stated that he would deny the larger amount of the attorneys fees requested on behalf of the appellee in the light of all of the circumstances in the case. The trial Court gave full consideration to all of appellant's requests and granted her the relief she requested (Appellees' Appendix 5).

CONCLUSION

Appellee respectfully submits to this Court that the determination of the trial Court as to amount the attorneys fees and the denial of the request for the temporary restraining order was equitable and in compliance with appellant's request for the relief she sought. The judgment of the trial Court should be **AFFIRMED**.

Respectfully submitted,

N. MEYER BAKER
613 15th Street, N. W., #710
Washington 5, D. C.

Attorney for the Appellees.

A P P E N D I X

APPELLEES' APPENDIX

[Filed February 6, 1959]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIET C. BRYAN,

Plaintiff,

v.

FRANK PARONI, Trustee,

Defendant.

:

:

:

:

:

CIVIL ACTION

NO. 1836-58

Washington, D. C.,

Friday, August 8, 1958.

The above-entitled matter came on for hearing on motion before HONORABLE LUTHER W. YOUNGDAHL, a judge in the United States District Court, at 10:10 a.m.

APPEARANCES:

On behalf of Plaintiff:

H. EUGENE BRYAN, Esq.

On behalf of Defendant:

N. MEYER BAKER, Esq.

2

P R O C E E D I N G S

THE DEPUTY CLERK: No. 2, Bryan versus Paroni.

MR. BRYAN: This matter is before the Court on a motion for a preliminary injunction. So that the Court may have the background of this matter, I would like to go back into the history of it.

Back on May 13, 1957, there --

THE COURT: I have read the three jackets and gone over them carefully. So I don't think you have to take time on that. I think I am familiar with the picture pretty generally.

It is my conviction from a study of these cases that the issue as to an accounting and as to whether or not there was usury is completely out of the case, cannot be considered any more.

The only question in my mind that disturbs me is whether you are entitled to include in your foreclosure proceedings this attorney's fee.

MR. BRYAN: Well, that was the matter that was argued before Judge Morris when the motion for appointment of a substitute trustee came up.

THE COURT: The record does not so indicate.

MR. BRYAN: It wasn't argued.

THE COURT: There is nothing whatever in the record.

3 MR. BRYAN: Except this, that the Court continued extending the time for the appointment of a trustee for a period of two weeks to allow me time to file these proceedings.

THE COURT: I mean, what authority do you have for including attorney fees in the foreclosure?

MR. BRYAN: I say we don't have any authority. I say it is beyond the scope of the deed of trust.

THE COURT: You are representing the -- you are the property owner?

MR. BRYAN: Yes, sir.

THE COURT: Well, I better ask the question of the other side.

The other things of issue are out of this case and res judicata and may be determined by the Court of Appeals' decision and the dismissal with prejudice of the other action, except this issue which disturbed me as to whether you are entitled to include in the foreclosure proceedings this attorney's fee.

MR. BAKER: I hand to you the original of the deed of trust recording the note, and I have noted by pencil marks the provision of the deed of trust relative to the inclusion of counsel fees.

THE COURT: It says reasonable attorneys' fees. You are claiming eight hundred nine --

4 MR. BAKER: Nine hundred twenty dollars.

THE COURT: Doesn't there have to be something introduced before you include in your foreclosure proceedings what reasonable attorneys' fees are? How is that to be determined?

MR. BAKER: I think it is an item of expense which comes into being --

THE COURT: Suppose the property owner objects that it is unreasonable. How is he to protect himself on the issue of reasonableness?

MR. BRYAN: By claim against the proceeds of the fund after foreclosure.

THE COURT: Well, that is a little late, isn't it? Suppose he would have enough money to bid in for an amount including reasonable fees but would not have a sufficient fund to bid in for an amount that would include what the court might later hold to be unreasonable attorneys' fees. He would then be seriously prejudiced. Isn't he entitled to have that determined in advance of the foreclosure sale?

MR. BAKER: To be honest with the Court, I frankly don't know.

THE COURT: That is the only thing that bothers me in this case. I think that is the only point he has to raise, and I am frank to say that there have been too many lawsuits already and this litigation has got to come to an end.

5 We have three jackets already on this thing and we don't want any more. We have enough litigation here anyway without all this constant litigation over the same issues. Either you are going to redeem from that foreclosure sale and protect your property or you are not.

Have you enough money to redeem from that sale?

MR. BRYAN: Yes, Your Honor. We have offered it.

THE COURT: With interest and costs?

MR. BRYAN: Yes, Your Honor.

THE COURT: The only issue you have got here is reasonable attorneys' fees, and I think the instrument does give authority for the inclusion of reasonable attorneys' fees. It is in the document.

MR. BRYAN: Providing those were incurred in the attachment to the foreclosure proceedings.

MR. BAKER: May I point out --

MR. BRYAN: Those fees that he is raising are fees for his services in connection with a suit to reform the note.

THE COURT: Well, that is the question here. Let me see what this provision is here. No, it is a pretty broad provision in this trust deed, counsel. It says here:

"Reasonable counsel fees incurred or paid by the said parties to the second part or substituted trustee or by any person hereby secured on account of any litigation at law or in equity which may arise in respect to
6 this trust or the property hereinafter mentioned."

So I think it is broad enough.

MR. BRYAN: Well, that is the preamble to the agreement, Your Honor. You notice on the second page:

"Upon this further trust upon any default or failure being made in the payment of her note or any installment."

THE COURT: "Or upon default in payment on demand of any sum or sums advanced by the holder or holders of said note on account of any counsel fees and expenses of this trust."

Naturally, that refers back to the description of the counsel fees which is indicated in the original document.

I will be glad to hear evidence on what constitutes reasonable attorneys' fees.

MR. BAKER: If the Court please, my file reveals more than seventy-two hours in representation with reference to the handling of this matter in the lower court, the preparation of the filing and filing of the briefs in the appellate court, the preparation and filing of the litigation with reference to the substitution of the deed of trust on the third suit, which was filed.

7 I submit to the Court that even at the rate of fifteen dollars an hour or less they are reasonable counsel fees.

THE COURT: What have you to say on that, Counsel?

MR. BRYAN: Well, in the first case, if Your Honor pleases, there was a consent order dismissing the injunction, and that was dismissed with prejudice. The basis of that was that the suit had been brought prematurely. Now, no cause of action had arisen at the time so that then you couldn't dismiss anything.

THE COURT: Let us take the summary judgment one. I understand what what was. How about the amount of time expended in that?

MR. BRYAN: Your Honor, I don't know how much time he expended. The summary judgment was entered by default.

THE COURT: We are not concerned with your attorney's fees. We are not giving you any. The only issue before me is the reasonable attorney's fees for counsel, which may be included in these foreclosure proceedings.

MR. BRYAN: Well, I say nine hundred dollars to collect sixteen hundred dollars on its face is ridiculous.

THE COURT: I think I have to take into consideration the amount of the indebtedness. Naturally, I recognize you spent a lot of time in this case, but

8 I think the Court does have to take into consideration the fact that this motion for a summary judgment went by default. There was no appearance. Counsel made no appearance. Two days later he came in when the order was submitted to Judge Holtzoff and by another attorney claimed that he was busy in some other court and was also tied up in this other court at the time you got your default.

MR. BRYAN: That is correct.

THE COURT: Nevertheless, the order was signed by Judge Holtzoff, and he appealed that in the Court of Appeals, and the Court of Appeals sustained the order granting summary judgment by default. So there wasn't too extensive research involved. I take it that there was a rather simple issue involved in a proposition of that kind, and I think I have to take into consideration the fact of the amount of the indebtedness.

I would suggest an attorney's fees of five hundred dollars to be included in the foreclosure proceedings. I don't think it is going to be necessary for me or that it would be proper for me to sign an order granting a preliminary injunction enjoining the commencement of further proceedings. After my suggestion this morning to counsel, I think you better call this quits right now, this proposition. Are you ready to do that?

9 MR. BRYAN: Yes.

THE COURT: If you assure me you are ready to do that, I won't sign any order. I am not inclined to be signing orders restraining litigation except

under unusual circumstances. And I think this is a proposition where if you want your house back you better be prepared to turn over the cash that is necessary now, which is the principal plus interest and costs and five hundred dollars attorney's fees.

MR. BRYAN: I might say it is not my house.

THE COURT: I understood it was your property.

MR. BRYAN: No, sir, my wife's.

THE COURT: You are living together.

MR. BRYAN: Not in this house.

THE COURT: You may draw an order, Counsel.

(Thereupon, the hearing on the motion adjourned at 10:20 a.m.)

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